

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16951 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

JALAMBHAI POONAMBHAI PARMAR

Versus

STATE OF GUJARAT THRO' DY. SECRETARY

Appearance:

1. Special Civil Application No. 16951 of 2003
MR YATIN SONI for Petitioner No. 1
MS. PAURAMI SHETH, LD. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 26/02/2004

ORAL JUDGEMENT

1. Ms. Paurami Sheth, learned AGP has placed on record affidavit in reply filed by Respondent No.2. Same

is kept on record.

2. In this petition under Article 226 of the Constitution of India the petitioner has challenged the order of detention No: PASA/S.R./03/2003 dated 31-8-2003 (Annexure-A) passed by Respondeat No.2 under section 3(1) of The Gujarat Prevention of Anti Social Activities Act, 1985 (herein after referred to as the 'PASA Act') stating the petitioner to be a bootlegger within the meaning of section 2 (B) of the said Act and prays for quashing and setting aside the said order and setting the petitioner at liberty.

3. The grounds of detention under section 9 (1) of the PASA Act suggests registration of 7 cases under section 66(1) (B), 65 (A) (E), 81, 83 and 116 (B) of the Prohibition Act during the period from 6-3-2001 to 17-7-2003. In the detention order it is stated that the activity of storing liquor and selling the same is injurious to public health ; that the cases have been registered against the petitioner and is being released on bail by the Court.

4. Challenging the impugned order of detention it is submitted by Ms. Shahin Qureshi for Mr. Yatin Soni, learned advocate for the petitioner that, in the grounds of detention it is not suggested that the activity of bootlegging by the petitioner is an obstacle to the maintenance of public order. It is further submitted that all what has been stated in the detention order is that the activity of storing liquor and selling the same is injurious to the public health. A perusal of the grounds of detention, particularly ground no.3 suggests that all what has been stated about bootlegging activity of the petitioner is, same is injurious to public health and it is not indicated in the grounds of detention that the activity indulged into by the petitioner is adverse to maintenance of public order.

5. In the case of KANUJI S. ZALA v. STATE OF GUJARAT & ORS. 2000 (4) GLR pg. 3256, while dealing with the case under section 3 & 4 (3) of the PASA Act, it has been held by the Supreme Court that, when detention order is challenged Court has to consider whether there was credible material on which reasonable inference can be drawn as regards adverse effect on public order. In the instant case in the grounds of detention it has not been mentioned that the activities of the petitioner is adverse to the maintenance of public order nor it is suggested that there was any credible material before the detaining authority on the basis of which a reasonable

inference could have been drawn as regards the adverse effect on the maintenance of public order as defined by the Act.

6. In my opinion, since the grounds of detention (Annexure-B) do not state that the activity indulged into by the petitioner is adverse to the maintenance of public order, the order under section 3 (1) only on the basis of the activities of the petitioner being injurious to the public health cannot be sustained and would be liable to be quashed.

7. In the result the petition is granted and accordingly granted. The impugned detention order No: PASA/S.R./03/2003 dated 31-8-2003 (Annexure-A) passed under the Prevention of Anti Social Activities Act, 1985 by Respondent No.2 is quashed and set aside. The petitioner detained - Jalambahi Poonambhai Parmar is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service permitted.

Dt: 26-2-2004

(N.G. Nandi, J)

/vgn